

1961

Howard Anderson et al v. Utah County and the Board of County Commissioners : Brief of Respondents

Utah Supreme Court

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In the Supreme Court of the State of Utah

HOWARD ANDERSON, ET AL,
Petitioners and Appellants,

v.

UTAH COUNTY AND THE BOARD
OF COUNTY COMMISSIONERS OF
UTAH COUNTY,

Respondents.

NO.
9549

FILED

BRIEF OF RESPONDENTS

Appeal from the Judgment of the 4th District Court for
Utah County, Honorable F. W. Keller, Visiting Judge

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INDEX

Page

STATEMENT OF FACTS.....	1
STATEMENT OF POINTS.....	2
ARGUMENT	3

POINT I

THE TRIAL COURT'S MEMORANDUM DECISION IS NOT AN UNWARRANTED JUDICIAL VETO OF LEGISLATIVE AND EXECUTIVE ACTION	3
---	---

POINT II

THE APPROPRIATE LEGAL RULES OF STATUTORY CONSTRUCTION AND INTENT DO NOT REQUIRE THE INCLUSION OF ALL TYPES OF ASSOCIATIONS WITHIN THE MEANING OF THE ACT	5
--	---

POINT III

POLITICAL PARTIES ARE NOT CONTEMPLATED BY THE ACT.....	8
--	---

POINT IV

EVEN IF THE STATUTE WERE TO COVER POLITICAL PARTIES, IT WAS NOT VIOLATED SINCE THE APPELLANTS WERE DISCHARGED FOR TWO REASONS, ONE POLITICAL AND THE OTHER NON-POLITICAL	9
--	---

POINT V

IF UTAH'S "RIGHT TO WORK" LAW IS INTERPRETED TO INCLUDE POLITICAL PARTIES WITHIN THE PHRASE "... ANY OTHER TYPE OF ASSOCIATION ... " IT IS AN UNCONSTITUTIONAL EXERCISE OF THE POLICE POWER....	10
---	----

INDEX (Continued)

Page

AUTHORITIES CITED

50 Am. Jur. (Statutes) Sec. 377 pp. 385-389.....	4, 5
50 Am. Jur. (Statutes) Sec. 249 pp. 244-246.....	6, 7
82 CJS Sec. 332, p. 658.....	6
14 Words and Phrases 212-221.....	7

CASES CITED

Donahue vs. Warner Brothers Picture Distributing Corporation, 272 Pac. 2nd 177, 2 Utah 2nd 256.....	7
E. C. Olsen Company vs. State Tax Commission, 109 Utah 563, 168 Pac. 2nd 324.....	7
Fleming vs. Mohawk Wrecking and Lumber Company, 331 U. S. 111.....	7
Lincoln Federal Labor Union vs. Northwestern Iron and Metal Company, 335 U. S. 525, 69 S. Ct. 251 (1959)	10, 11
Memorial Gardens of the Valley, Incorporated, vs. Love, 300 Pac. 2nd 628, 5 Utah 2nd 270.....	7
Norvill vs. State Tax Commission, 98 Utah 170, 97 Pac. 2nd 937.....	5
Rowley vs. Public Service Commission, 112 Utah 116, 185 Pac. 2nd 514.....	3, 5
State ex rel Corrigan vs. Cleveland-Cliffs Iron Company, 157 Northeast 2nd 331, 333, 169 Ohio State 42	13
United States vs. Shirley, D. C. Pa., 168 F. Supp. 382, 385	12
W. S. Hatch Company vs. Public Service Commission, 277 Pac. 2nd 809, 3 Utah 2nd 7.....	7
Yuratch vs. Palaguemines Parish Dem. Exec. Com., La. App., 32 So. 2nd 647, 652.....	12

STATUTES CITED

UCA 34-16-2	5
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BRIEF OF RESPONDENTS

STATEMENT OF FACTS

Respondents agree with the Appellants' Statement of Facts except to add the following:

Within a few weeks after the Utah County elections were held in the fall of 1960, a suit was filed by the unsuccessful Democratic candidates, Marcellus Nielsen and David Greenwood, seeking to reverse the election result (T. 35, 36). The Appellants were employees of the Utah County Road Department under Nielsen, and all but one gave money to help finance this lawsuit. Most gave amounts

of \$60.00 or \$100.00 each (Findings of Fact Par. 6, T. 36). This, despite the fact that many of the employees who contributed had been employed by Utah County under a previous Republican administration, had obtained Republican party clearances and had been supervised by Sterling D. Jones as County Commission (T. 49-55).

Commissioner Jones testified that after these employees had seen fit to inject themselves into a suit to unseat him that "I could not expect their loyalty, that they could not be loyal to me" (T. 33). The Trial Court found as a fact that Jones and through him the Utah County Commission had a dual motive in the firing—first, that the employees could not be entirely loyal, and second, because they were members of the Democratic party and not members of the Republican party (Findings of Fact par. 8).

STATEMENT OF POINTS

POINT I

THE TRIAL COURT'S MEMORANDUM DECISION IS NOT AN UNWARRANTED JUDICIAL VETO OF LEGISLATIVE AND EXECUTIVE ACTION.

POINT II

THE APPROPRIATE LEGAL RULES OF STATUTORY CONSTRUCTION AND INTENT DO NOT REQUIRE THE INCLUSION OF ALL TYPES OF ASSOCIATIONS WITHIN THE MEANING OF THE ACT.

POINT III

POLITICAL PARTIES ARE NOT CONTEMPLATED BY THE ACT.

3

POINT IV

EVEN IF THE STATUTE WERE TO COVER POLITICAL PARTIES, IT WAS NOT VIOLATED SINCE THE APPELLANTS WERE DISCHARGED FOR TWO REASONS, ONE POLITICAL AND THE OTHER NON-POLITICAL.

POINT V

IF UTAH'S "RIGHT TO WORK" LAW IS INTERPRETED TO INCLUDE POLITICAL PARTIES WITHIN THE PHRASE ". . . ANY OTHER TYPE OF ASSOCIATION . . ." IT IS AN UNCONSTITUTIONAL EXERCISE OF THE POLICE POWER.

ARGUMENT

POINT I

THE TRIAL COURT'S MEMORANDUM DECISION IS NOT AN UNWARRANTED JUDICIAL VETO OF LEGISLATIVE AND EXECUTIVE ACTION.

We agree with the language of the Rowley case quoted by the Appellants at page 11 of their brief. (Rowley vs. Public Service Commission, 112 Utah 116, 185 Pac. 2nd 514). Particularly would we emphasize the language which says:

"On the other hand, when the legislative intent is not clear and certain, and a literal interpretation of the language of the statute gives an absurd result, then the court is justified in searching the enactment for further indications of legislative intent. These indications can be determined by the wording of the act

or by considering the underlying reasons and necessity of the amendments and the purposes to be accomplished.”

Since political parties are not specifically mentioned in the Right to Work Act, the Trial Court had to decide whether the act included political parties. The meaning of “or other associations” had to be determined. Is a political party an “association” within the meaning of the act?

The Trial Court held that so to find would “result in finding an unreasonable and absurd intention on the part of the legislature.” It would hamstring elected officials and a huge segment of public employees would be left with no statutory law fixing their work standards and tenure. The Trial Judge simply says that the legislature could not have intended such an absurd result.

Appellants frankly concede at page 8 of their brief that their case rests upon the premise that the phrase “or any other type of association” is all inclusive. Suppose some particular church had a policy to hire only ministers who were members of that church or, saying it in another way, had a policy not to hire ministers of any other faith but their own. Under the Appellants’ interpretation the church could not refuse to hire ministers for this reason because such refusal would violate the Right to Work Law. This absurd result is a sample of the multitude of ridiculous and unintended situations which would attend the application of the statute if appellants’ interpretation were correct.

That the Court may reject an unreasonable or absurd construction of a statute is set forth in 50 Am Jur (Statutes) Sec. 377, p. 385-389, where the text says in part at p. 385-387:

"A statute subject to interpretation is presumed not to have been intended to produce absurd consequences, but to have the most reasonable operation that its language permits, and it is a general rule that where a statute is ambiguous in terms and fairly susceptible of two constructions, the unreasonableness or absurdity which may follow one construction or the other may properly be considered. In some cases involving the construction of a statute, considerations of what is reasonable are even regarded as having potent influence. If possible, doubtful provisions should be given a reasonable, rational, sensible, and intelligent construction. Unreasonable, absurd, or ridiculous consequences should be avoided."

This Court approves this principle and so announced in *Norvill vs. State Tax Commission*, 98 Utah 170; 97 Pac. 2nd 937, referred to in Appellants' brief at p. 11 and also in *Rowley vs. Public Service Commission*, *Supra*.

POINT II

THE APPROPRIATE LEGAL RULES OF STATUTORY CONSTRUCTION AND INTENT DO NOT REQUIRE THE INCLUSION OF ALL TYPES OF ASSOCIATIONS WITHIN THE MEANING OF THE ACT.

Respondents submit that Utah's Right to Work Statute was intended to cover only labor organizations and not political parties and all other organizations. U. C. A. 34-16-2 reads:

"It is hereby declared to be the public policy of the State of Utah that the right of persons to work . . . shall not be denied . . . on account of membership or non-membership in any labor union, labor organization or any other type of organization . . ."

The rule of statutory construction called *Ejusdem Generis* (of the same kind, class or nature) can reasonably and justifiably be applied to this statute and to the Right to Work Law in general. The statute would then read:

“The . . . right . . . to work . . . shall not be denied . . . on account of membership or non-membership in any labor union, labor organization, or any other type of (labor) organization.”

The general rule is set forth in 82 CJS Sec. 332 p. 658 and in 50 Am. Jur. Sec. 249 p. 244-246 where the following appears:

“General and specific words in a statute which are associated together, and which are capable of an analogous meaning, take color from each other, so that the general words are restricted to a sense analogous to the less general. Under this rule, general terms in a statute may be regarded as limited by subsequent more specific terms. Similarly, in accordance with what is commonly known as the rule of *Ejusdem Generis*, where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be presumed to be, and construed as, restricted by the particular designation and as including only things or persons of the same kind, class, character, or nature as those specifically enumerated. The general words are deemed to have been used, not to the wide extent which they might bear if standing alone, but as related to words of more definite and particular meaning with which they are associated. In accordance with the rule of *Ejusdem Generis*, such terms as “other,” “other thing,” “other persons,” “otherwise,” or “any other,” when preceded by a specific enumeration, are commonly given a restricted meaning, and limited to ar-

ticles of the same nature as those previously described. The rule of *Ejusdem Generis* has been declared to be specific application of the broader maxim of "*noscitur a sociis*," which is discussed in other sections of this subdivision."

A collection of cases on the doctrine is set forth in 14 Words and Phrases at p. 212-221.

This Court has recently approved and applied the doctrine in *Donahue vs. Warner Brothers Pictures Distributing Corporation*, 272 Pac. 2nd 177, 2 Utah 2nd 256; *W. S. Hatch Company vs. Public Service Commission*, 277 Pac. 2nd 809, 3 Utah 2nd 7 and *Memorial Gardens of the Valley, Incorporated vs. Love*, 300 Pac. 2nd 628, 5 Utah 2nd 270.

With respect to the proffered exhibit 1, a letter sent by the then Governor, J. Bracken Lee, the Court properly excluded the evidence. First, because the letter does not mention political parties and, therefore, is of no use to the Court and also the same is inadmissible as incompetent (T. 65, 66). Is this letter admissible as an "executive view" as claimed on page 21 of Appellants' brief? In *Fleming vs. Mohawk Wrecking and Lumber Company*, 331 U. S. 111, cited by Appellants as authority for admissibility of exhibit 1, the Court was construing an act which had been repeatedly construed by the President of the United States. We emphasize the words "had been" since the Court was referring to an executive experience in construing the act.

In *E. C. Olsen Company vs. State Tax Commission*, 109 Utah 563, 168 Pac. 2nd 324, also cited by Appellants as authority for the admission of exhibit 1, the Court states at page 332 in 168 Pac. 2nd that:

"Where there is an ambiguity in the statute as to whether the latter does or does not cover a particular matter a practical construction of the statute shown to have been the accepted construction of the agency charged with administering the matters in question under the statute will be one factor which the Court may take into consideration as persuasive as to the meaning of the statute."

The Court then found that the facts of that case "do not show a practical interpretation of the statute by the Tax Commission."

It is submitted that former Governor Lee's opinion of the legal meaning of the statute given before passage of the act in a letter to legislators and other interested persons is not "practical interpretation of the statute" and is a legal conclusion (T. 62, 63).

For the same reason oral testimony about what the former Governor believed the law to have meant prior to its passage, was also properly excluded by the Trial Court.

POINT III

POLITICAL PARTIES ARE NOT CONTEMPLATED BY THE ACT.

Respondents concede that the Utah Right to Work statute has different wording than other Right to Work Statutes. Utah has made the act apply to the State and to its political subdivisions and does so by specifically defining employer to include all persons, firms, associations, corporations, the State of Utah, its counties, cities, school districts, and other political subdivisions. If the legislature had intended the act to apply to political parties, it could

have made it crystal clear by simply saying so. Merely because the legislature broadened the meaning of employer to include the State and its subdivisions, does not per se mean that every conceivable kind of association is subject to the act.

Respondents submit that while the opinion of the distinguished President of the Church of Jesus Christ of Latter-Day Saints is interesting and perhaps states a concept many would agree with, such statement is not in the record and in any event is of no probative value in determining the intent of the legislature in this case.

POINT IV

EVEN IF THE STATUTE WERE TO COVER POLITICAL PARTIES, IT WAS NOT VIOLATED SINCE THE APPELLANTS WERE DISCHARGED FOR TWO REASONS, ONE POLITICAL AND THE OTHER NON-POLITICAL.

The Trial Court found as a fact that the Appellants were fired for two reasons—one for membership in the Democratic party and lack of membership in the Republican party, and the other because the supervising County Commissioner felt that the Appellants could not be loyal (Findings of Fact No. 8). Commissioner Jones felt he could not expect loyalty from the men who had contributed substantial sums to unseat him (T. 33).

The brief of Appellants correctly states on page 3 that Appellants asserted at the trial that they were fired because they were members of the Democratic party and not members of the Republican party. The second amended peti-

tion which sets out Appellants' contentions in the pleadings flatly asserts at paragraph 6 that:

"The depriving of the petitioners of their said employment, as aforesaid, was effected because of their association with and active support of, the Democratic party in Utah County, contrary to and in violation of said statute."

One might compare this situation to one where a union official disliked by management is fired for two reasons: membership in a union and stealing from the employer. Surely this discharge would not violate a Right to Work Law. The Right to Work Law covers only that situation where the sole reason for discharge is membership or non-membership in a labor union or labor organization.

Likewise, here, where such a dual motive prompted the discharge, the law was not violated even if it be assumed that political parties were intended to be covered by the statute.

POINT V

IF UTAH'S "RIGHT TO WORK" LAW IS INTERPRETED TO INCLUDE POLITICAL PARTIES WITHIN THE PHRASE ". . . ANY OTHER TYPE OF ASSOCIATION . . ." IT IS AN UNCONSTITUTIONAL EXERCISE OF THE POLICE POWER.

The constitutionality of the "Right to Work" Laws has been repeatedly affirmed by the U. S. Supreme Court. The leading case (really two cases considered together) is *Lincoln Federal Labor Union vs. Northwestern Iron and Metal Company*, 335 U. S. 525, 69 S. Ct. 251 (1959). This case involved a North Carolina statute and a Nebraska

constitutional amendment which provided that no person in those states shall be denied an opportunity to obtain or retain employment because he is or is not a member of a labor organization. The constitutionality of the laws was affirmed. The Courts said it had:

“ . . . consciously returned closer and closer to the earlier constitutional principle that states have power to regulate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law. Just as we have held that the due process clause erects no obstacle to block legislative protection of union members, we now hold that legislative protection can be afforded non-union workers.”

A long string of decisions have followed this case. All cases have been limited to labor troubles with some type of labor organization involved. In no case found has any Court even suggested applying the “Right to Work” Laws to other than labor organizations.

There is little doubt as to the constitutionality of state laws which operate under the police power and which regulate economic affairs, and, in particular, regulate evil practices in labor fields. This, however, does not mean that all state regulation in the labor field is constitutional; it is only constitutional if it is not unreasonable, or capricious, or arbitrary and the means selected have a real and substantial relation to the object sought to be obtained. If, “ . . . any other type of association . . . ” is interpreted to mean a political party (or any other group that is not connected with labor) then it becomes unreasonable and arbitrary, and is unconstitutional as an invalid exercise

of the police power because it limits personal freedoms guaranteed by the United States and Utah State Constitutions. It would limit freedom without any real evil to be corrected. To say that it is reasonable and non-arbitrary to put limitations on labor unions is far different than to say it is reasonable and non-arbitrary to put the same limitations on all organizations of whatever kind or nature.

A further consideration as to whether political parties should be included within the statute is the nature of political parties themselves. In *Yuratich vs. Palaguemines Parish Dem. Exec. Com.*, La. App., 32 So. 2nd 647, 652, the Court noted that:

“A political party is a voluntary association of individuals organized for purposes of furthering particular political or economic beliefs.”

United States vs. Shirley, D. C. Pa., 168 F. Supp. 382, 385 defined a political party as:

“a body of persons associated for the purpose of promoting certain views, opinions or principles with respect to the government and is not a person, firm, or a corporation.”

How can a political party satisfactorily promote its political and economic views and opinions if its hands are tied with respect to whom its candidates can hire and fire? There is nothing inherently bad in the “spoils” system. The candidates of the party which wins hire those to work for them who have worked for and who hold common views. At times, the legislature has specifically withdrawn certain jobs from this system, but has put them under a merit system when doing so. Some political personalities are elec-

ted specifically because they stand on a policy of "house-cleaning their departments to eliminate dead wood." This right or power should not be taken from elected officials unless it is the clear intent of the legislature to take it away. Without leaving a merit system in its place leaves "dead wood" to accumulate. It is not clear in this case that it was the intent of the legislature to include political parties. Rather, the weight of evidence indicates that it was not their intent to include political parties. State ex rel Corrigan vs. Cleveland-Cliffs Iron Company, 157 northeast 2nd 331, 333, 169 Ohio State 42 defined a political party as.

"an association of individuals whose primary purposes are to promote or accomplish elections or appointments to public offices, positions or jobs."

To give an interpretation to the law which would limit political parties and thus, elected officials so that they could not accomplish some of their goals by hiring and firing would be arbitrary and unreasonable and thus, violate both the United States and Utah State Constitutions.

CONCLUSION

Respondents believe the phrase "any other type of association" should be interpreted in accordance with the rules of Eiusdem Generis. The phrase would then read "any other type of (labor) association". This interpretation would exclude political parties from coverage by the act.

Respondents believe that if the phrase does mean all associations as contended by the Appellants that the statute would be absurd and unreasonable and the Court is

justified in adopting an interpretation which would not require absurd and unreasonable consequences.

Respondents further take the position that even if political parties were included within the coverage of the act that the statute was not even violated since Appellants were fired for two reasons: membership in the political party and because Commissioner Jones felt they could not be loyal to him, their supervising Commissioner.

Finally, Appellants urge that if Utah's Right to Work Laws is interpreted to include political parties, it is an unconstitutional exercise of the state police power.

Respondents feel that the decision of the Trial Court can be supported on any one of the above listed grounds.

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